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October 18, 1955
Opinion No. 55-205

REQUESTED BY: Honorable William J. Mahoney, Jr., Maricopa County Attorney

OPINION BY: Robert Morrison, The Attorney General
Gordon Aldrich, Assistant Attorney General

QUESTION: May school trustees lease buildings and lands to be used for schools?

CONCLUSION: No.

School districts have only such powers as the statute may grant or such powers as are necessarily implied from the grant of express powers. 47 Am. Jur. 325, Sec. 43. An authority to buy and sell implies no authority to pledge. 5 Words and Phrases 1064; Trent vs. Sherlock, 66 Pac. 700. The powers of the trustees of school districts are contained in Section 54-416 (as frequently amended) and there is no power in the latest amendments of this section to lease lands and buildings. If there is a doubt as to the power of a school district board, such doubts are resolved against the power. 47 Am. Jur. 325, Sec. 42. There is some encyclopedic authority to the effect that: "the duty to provide a school house may, it has been held, be performed by renting a proper school house." 47 Am. Jur. 349, citing Hively vs. Nappanee, 202 Ind. 28, 169 N.E. 51, 71 A.L.R. 1311. However, a reading of this case shows that it does not hold what it says it holds.

Now, it is true that our statute prescribes, in Subsection 3, that a district board shall "... rent ... the school property of the district;..." Of course, the power to rent need not necessarily imply the power to lease, even though the terms "rent" and "lease" are sometimes used synonymously. There is a California case, to wit, Mahoney vs. San Francisco Board of Education, 107 Pac. 584, 12 Cal. App. 293, which holds that a statute authorizing a district board to rent does not authorize a district board to lease. Apparently this statute which the California Court construed is very similar to ours, in that it uses the terms "rent school property". Then, this California Court said that the term "rent" cannot possibly mean "lease" school property to be used as a school house, because if it leased property for such use, such property would not be "school property". Apparently the Courts felt that, because the term "school property" was used in the school statute, there was authority for the board to rent it out for other purposes, but there was no authority to go out and sell property that did not belong to the school board and

lease it, because then such property was not "school property".

A discussion of lease-purchase agreements as invasions of constitutional or statutory limitations on indebtedness is annotated in 71 A.L.R. 1318. The majority of opinions hold lease-purchase and lease-options as palpable schemes to evade constitutional limitations. Billings v. Bankers' Bond Co. (1923) 119 Ky. 490, 251 S.W. 643; Mahoney v. San Francisco, (1927) 201 Cal. 248, 257 Pac. 49; Baltimore & O. R. Co. v. People, (1902) 200 Ill. 541, 66 N.E. 148.

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